IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.MC.No. 2004 of 2007()

CRA.899/2001 of II ADDL.SESSIONS COURT, ERNAKULAM
CC.1273/1998 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

.....

PETITIONER:

JAYACHANDRAN, S/O. GOPALAKRISHNAN,
PALAKKATTU HOUSE, KUNDAYITHU KARA,
KANJIRAMATTOM, ERNAKULAM DISTRICT.

BY ADV. SRI.K.S.SAJEEV KUMAR

RESPONDENTS:

---

1. NAIR SERVICE SOCIETY, PLAPPILLY,
NSS KARAYOGAM NO.3115, REP. BY ITS SECRETARY,
VENUGOPAL, S/O. RAMAKRIHNA PILLAI, KEERTHI,
KULAYITTIKKARA P.O., KANJIRAMATTOM.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY ADV. SRI.K.N.CHANDRABABU
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2004 of 2007

Dated this the 22nd day of June 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The verdict of guilty, conviction and sentence have become final with the disposal of the revision petition by this court. In the revision, the sentence was reduced to imprisonment till rising of court. There is a further direction to pay an amount of Rs.55,000/- and in default to undergo S.I for a period of one month. The petitioner was directed to appear before the learned Magistrate on 27/9/2004.

2. The petitioner did not appear before the learned Magistrate, as directed, but has, by now succeeded in getting the matter settled and compounded by the complainant. The complainant and the petitioner have come before this court with a prayer that the dictum in Sabu George v. Home Secretary [2007(1) KLT 982] may be invoked to accept the composition and set aside the sentence imposed.

3. The dictum in Sabu George v. Home Secretary [2007 (1) KLT 982] has its foundation on the fact that the accused would have been unjustly incarcerated in prison for a long term of imprisonment even after the post revision composition of the offence. Facts of this case is totally different. Hence, the petitioner has to undergo only imprisonment till rising of court. Sabu George v. Home Secretary [2007(1) KLT 982] is not to be reckoned as authority for an invariable proposition that all post revision compositions can or ought to be accepted. Only because of the injustice which would have resulted in that case did this court resort to the invocation of the extraordinary inherent jurisdiction available with the court. No such circumstances appear in this case to justify such invocation.

4. The petitioner must appear before the learned Magistrate to undergo the substantive sentence of imprisonment till rising of court. He was directed to “pay” the amount of Rs.55,000/- as compensation. If that has already been paid, the petitioner and the complainant can report that fact to the learned Magistrate. If the learned Magistrate is satisfied that such payment has been made, there can be no question of

executing the default sentence. Even the fact that the petitioner did not appear on 27/9/2004 as directed or till this date, cannot in any way oblige the petitioner to undergo the default sentence if payment has been made later. The position has been made crystal clear in Girish v. Muthoot Capital Service (P) Ltd. [2007 (1) KLT 16].

5. This Criminal Miscellaneous Case is, in these circumstances, dismissed with the above observations. The petitioner can, any day, appear before the learned Magistrate to undergo the substantive sentence of imprisonment till rising of court. He can also satisfy the learned Magistrate that payment has been made, as directed in which event he shall not have to undergo any default sentence.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007